

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

JOSE GOMEZ ESPINOZA	§	
VS.	§	CIVIL ACTION NO. 9:12cv191
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ORDER

Petitioner Jose Gomez Espinoza, an inmate at the Coffield Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought the above-styled petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommended the petition be dismissed as barred by limitations. The court previously adopted the report without objections being filed by the parties within the time provided in 28 U.S.C. § 636(b)(1).

After the final judgment was entered, however, the court received objections from petitioner. While petitioner did not provide a certificate of service, a review of the postmark on the envelope indicates petitioner's objections were delivered to prison officials before the expiration of time for filing objections. Accordingly, petitioner is entitled to *de novo* review of his objections in accordance with FED. R. CIV. P. 72(b).<sup>1</sup>

After careful consideration, the court concludes petitioner's objections should be overruled. For the reasons set forth in the report, petitioner's objections are without merit. As petitioner stated in the affidavit attached to his response to the court's order regarding the tardiness of his petition, the untimeliness of his petition was due to losing part of his records which indicated the exact date of denial of his state review. As the magistrate judge determined, petitioner has failed to show the

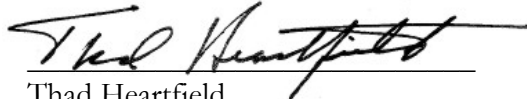
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<sup>1</sup> Without moving the court for consideration of his objections, petitioner filed a notice of appeal. Accordingly, the jurisdiction to entertain the objections is not clear. However, in an effort to aid the appeal, the court has conducted a *de novo* review of the objections.

existence of rare and exceptional circumstances which would entitle him to equitable tolling. Additionally, petitioner has failed to show he diligently pursued his claims. Accordingly, it is

**ORDERED** that petitioner's objections are **OVERRULED**.

**SIGNED** this the 27 day of **July, 2015**.



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Thad Heartfield  
United States District Judge